

BEFORE THE POLLUTION CONTROL HEARINGS BOARDS  
STATE OF WASHINGTON

IN THE MATTER of a Civil )  
Penalty assessed under the )  
provisions of RCW 70.105.080. )  
WEB PRESS CORPORATION, )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB No. 86-61

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of an \$8000 civil penalty for alleged violations of dangerous waste regulations, came on for hearing before the Pollution Control Hearings Board, Lawrence J. Faulk, Chairman, and Wick Dufford, Member, convened at Lacey, Washington on October 16, 1986. Administrative Appeals Judge, William A. Harrison, presided.

Appellant appeared by its attorney, Charles K. Douthwaite. Respondent appeared by Terese Neu Richmond, Assistant Attorney General. Reporter, Kim L. Otis, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 testimony heard and exhibits examined, the Pollution Control Hearings  
3 Board makes these

4 FINDINGS OF FACT

5 I.

6 Appellant, Web Press Corporation, has its factory in Renton,  
7 Washington, where it manufactures printing presses for the newspaper  
8 industry.

9 II.

10 In manufacturing printing presses Web utilizes machine tools that  
11 are oil cooled. Once used, the cooling oil must be disposed of as a  
12 waste product of manufacturing.

13 III.

14 In manufacturing printing presses, Web applies paint and paint  
15 thinner. Once used, the paint thinner must be disposed of as a waste  
16 product of manufacturing.

17 IV.

18 Web's combined monthly output of cooling oil and paint thinner  
19 wastes fluctuates above and below 400 pounds per month.

20 V.

21 Web's objective has always been to remove its wastes from the  
22 premises, although in early 1985 it was not doing so expeditiously.  
23 At that time it was not uncommon for the wastes to remain on Web's  
24 premises, for more than 90 days.

1 VI.

2 Web has at all times been cognizant of the fire hazard posed by  
3 its wastes. By early 1985, it had adopted the practice of storing th  
4 wastes in barrels at the rear of its parking lot. That is the portio  
5 of its premises farthest removed from its factory and from normal  
6 passers-by. Web's parking lot is only partially fenced, however, and  
7 there is no controlled gate.

8 VII.

9 In April, 1985, respondent Department of Ecology (DOE) sent its  
10 inspector to Webb's factory following a report that there was or may  
11 have been leakage of oil from Web's waste storage barrels. It is not  
12 proven that such leakage occurred.

13 VIII.

14 During the April, 1985, inspection by DOE, there were some 96  
15 barrels of waste oil or thinner stored as previously described at the  
16 rear of Web's parking lot.

17 IX.

18 As a result of the April, 1985, inspection Web took precautions t  
19 counter any potential spillage or leakage from the waste barrels.  
20 These included placing the barrels on wooden pallets atop gravel  
21 spread upon its paved parking lot. The gravel was contained by a  
22 perimeter of 2X12 planks. The barrels were also cordoned off with a  
23 length of chain which surrounded them.

1 X.

2 Following the April, 1985, incident DOE's inspector suggested to  
3 Web that the waste barrels be shipped out more expeditiously. Web  
4 immediately hired a new waste transporter which did begin removing the  
5 96-barrel accumulated backlog in late August, 1985, and continued  
6 through September and October. The last barrel of this backlog was  
7 shipped off the premises in November, 1985. Web has expended \$24,750  
8 to remove accumulated waste for off site disposal.

9 XI.

10 On August 14, 1985, DOE's inspector re-visited the site to conduct  
11 a full inspection. The scenario at the site was largely the same as  
12 in April.

13 XII.

14 Following the August, 1985, inspection, Web resolved to avoid any  
15 issue over its spent cooling oil by changing to a different type of  
16 oil which could be recycled. This changeover occurred in August,  
17 1985, and did away with disposing of all but a minimal residue of the  
18 new cooling oil. The changeover cost \$11,000. Web also sought,  
19 unsuccessfully, to find a paint thinner substitute that could be  
20 recycled.

21 XIII.

22 On October 17, 1985, DOE sent Web a "Warning Letter" in which it  
23 thanked Web for its cooperation during the August 14, 1985,  
24 inspection. The letter went on to detail alleged violations of ten  
25

1 separate sections of the DOE hazardous waste regulations, chapter  
2 173-303 WAC. It concluded by requiring Webb to file, within 45 days  
3 or less, extensive "certifications," apparently records and documents,  
4 showing compliance with the cited regulations. Among the regulations  
5 cited were WAC 173-303-310 and -630 relating respectively to security  
6 and containment of dangerous waste during storage.

7 XIV.

8 Web replied on November 15, 1985, with documents, pictures and  
9 procedures. By letter of December 2, 1985, DOE confirmed receipt of  
10 these. It concluded that Web was in compliance with some of the  
11 regulations cited earlier but not the security and containment  
12 regulations applicable to storage of dangerous waste.

13 XV.

14 On January 7, 1986, DOE assessed an \$8,000 civil penalty against  
15 Web for violation of the storage security (WAC 173-303-310) and  
16 containment (WAC 173-303-630) requirements of the Dangerous Waste  
17 regulations.

18 XVI.

19 At the present time, Web no longer stores wastes out of doors.  
20 The reduced wastes which it now generates, primarily paint thinner,  
21 are kept in its factory. These are securely stored in barrels on a  
22 grate overlying a containment basin. The barrels are regularly  
23 removed from the premises, typically in 45 days. This means of waste  
24 handling was recommended by a qualified consultant which Web hired at  
25 the cost of \$5,000.

XVII.

On March 28, 1986, Web appealed the penalty to this Board.

XVIII.

Any Conclusion of Law hereinafter determined to be a Finding of Fact is hereby adopted as such.

From these Facts, The Board comes to these

CONCLUSIONS OF LAW

I.

The cooling oil and paint thinner generated by Web Press Corporation were "dangerous waste" due to their ignitability. WAC 173-303-090(5).

II.

By storing cooling oil and paint thinner on its premises longer than 90 days, Web, a dangerous waste generator, also became subject to the regulations applicable to those whose principal business is to store dangerous waste. WAC 173-303-170(3). Among these regulations are those related to security (WAC 173-303-310) and containment (WAC 173-303-630).

III.

Web was subject to and in violation of WAC 173-303-310 which contemplates 24-hour surveillance and controlled gates or other entrances.

IV.

Web was subject to and in violation of WAC 173-303-630(7)

1 which contemplates a base underlying the containers which is free of  
2 cracks or gaps. The gravel and plank arrangement maintained by Web  
3 was not free of such cracks or gaps.

4 V.

5 In determining the amount of the penalty which should be sustained  
6 against the appellant, the surrounding facts and circumstances are  
7 relevant. Factors bearing on reasonableness must be considered.

8 These include:

- 9  
10 (a) The nature of the violation  
11 (b) The prior actions of the violator  
12 (c) The actions taken after the violation to solve the  
13 problem.

14 CH<sub>2</sub>O, Inc. v. Department of Ecology PCHB Nos. 84-182 and 85-66 (1985)  
15 and Comet Trailer Corporation v. Department of Ecology, PCHB Nos.  
16 85-151 and 85-184 (1986).

17 VI.

18 Nature of the Violation. There is no evidence of any impact on  
19 the environment caused by these violations. Moreover, the appellant  
20 is essentially a dangerous waste generator who very marginally  
21 ventured into the realm of waste storage for a brief period of time.  
22 Appellant's retention of wastes for more than 90 days made the  
23 regulations in question applicable whereas that would not have been  
24 the case had appellant disposed of its wastes a bit more  
25 expeditiously. See WAC 173-303-200 (1)(b). Also, the small quantity  
26 of wastes involved were barely over the minimum necessary (400 pounds

27 PCHB No. 86-61

FINAL FINDINGS OF FACT

CONCLUSIONS OF LAW AND ORDER

(7)

1 per month) to be regulated at all. See WAC 173-303-070(8). The  
2 nature of these violations is not severe.

3 VII.

4 Prior History. The appellant's prior history is without evidence  
5 of any violation. Appellant cooperated fully with respondent during  
6 the prior investigation as well as the subject investigation leading  
7 to this penalty. Appellant's prior history is good.

8 VIII.

9 Post-Violation Actions to Solve the Problem. The appellant took  
10 immediate action to begin expeditious removal of waste and to reduce  
11 waste by recycling following DOE's investigation. In all, these  
12 efforts resulted in the expenditure of some \$41,000 and fairly removed  
13 the appellant from its unaccustomed role of dangerous waste  
14 storage-operator in which role the violations occurred. Appellant  
15 appears to have successfully solved its problem.

16 IX.

17 On consideration of these matters, the \$8000 civil penalty should  
18 be abated to \$2000.

19 X.

20 Any Conclusion of Law hereinafter determined to be a Finding of  
21 Fact is hereby adopted as such.

22 From these Facts, The Board comes to this  
23  
24  
25



ORDER

The \$8000 civil penalty assessed by the Department of Ecology against Web Press Corporation is hereby abated to \$2000.

DONE at Lacey, Washington this 28<sup>th</sup> day of April, 1987.

POLLUTION CONTROL HEARINGS BOARD

Lawrence J. Faunk 4/27/87  
Lawrence J. Faunk, Chairman

Wick Dufford  
Wick Dufford, Member

William A. Harrison  
William A. Harrison  
Administrative Appeals Judge

PCHB No. 86-61

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

(9)